

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

JANE BRESE,

Charging Party,

-v-

K-MART,

Respondent.

Case # 0059011237

ORDER

Jane Brese (Brese) filed a complaint of disability discrimination and retaliation against K-Mart with the Department of Labor and Industry. The Human Rights Bureau conducted an informal investigation and determined there was reasonable cause to believe discrimination occurred. Therefore, Brese's complaint moved forward in the administrative process to the Hearings Bureau. The Hearings Bureau held a contested case hearing pursuant to § 49-2-505, MCA. Following the hearing, the Bureau issued a decision that determined K-Mart did not discriminate against Brese. The Hearings Bureau did not make a determination regarding the retaliation. Brese filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on May 15, 2007. Mary Ann Sutton appeared and argued on behalf of Brese. David McLean and Ryan Willmore appeared on behalf of K-Mart. David McLean argued on behalf of K-Mart.

After careful and due consideration of Brese's arguments on appeal, the Commission affirmed in part and reversed and remanded in part. The Commission

concluded the Hearings Bureau decision as to the disability discrimination was supported by competent substantial evidence and the conclusions of law were correct. However, the Commission concluded the decision did not comply with the essential requirements of the law in that the Hearings Bureau failed to address the retaliation claim that was included with the disability claim. Based upon these determinations, the Commission issued a previous order in this case.

Subsequently, staff for the Commission reviewed the minutes of the hearing and determined a procedural error had occurred when the Commission made its determination on this case. Specifically, it was discovered that the same member of the Commission made and then subsequently seconded his own motion. In order to correct this error, the Commission noticed the matter for hearing on July 25, 2007 and revoted on that date. With one commissioner absent, the same motion was made, properly seconded, and passed. Therefore, the previous order issued in this matter is hereby incorporated into this order in its entirety.

A person who has exhausted all administrative remedies available within an agency and who is aggrieved by a final agency decision in a contested case is entitled to file a petition for judicial review within 30 days after service of the final agency decision. Mont. Code Ann. § 2-4-702. The petition must be filed in the district where the petitioner resides or has the petitioner's principal place of business, or where the agency maintains its principal office.

DATED this ____ day of August, 2007.

Chair Ryan Rusche
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned employee of the Human Rights Bureau certifies that a true copy of the forgoing Human Rights Commission ORDER was served on the following persons by U.S. mail, postage prepaid, on this _____ day of August, 2007.

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